

## REMARKS

In accordance with the requirements of the Office Action dated November 1, 2006, Applicants hereby make the following election, with traverse, of the invention. The Applicants further make the following election, with traverse, of the species. The Applicants further identify the claims encompassing the elected invention and the elected species.

## ELECTION

### I. Election as to Invention

The Non-Final Office Action dated November 1, 2006 requests that the Applicants “elect a single invention for prosecution on the merits.” The Non-Final Office Action divided the claims into three groups. The groups are as follows:

- I. An antimicrobial surfactant blend composition (Claims 1-3, 8, 10-13, 23, 24 and 26-32)
- II. A method of controlling the growth of microorganisms (Claim 7)
- III. A method for preparing an antimicrobial surfactant blend composition (Claim 25)

The Applicants elect to prosecute, with traverse, the claims encompassed by Group I. Specifically, the Applicants believe that currently pending claims 1-3, 8, 10-13, 23, 24 and 26-32 are encompassed by the elected grouping.

As noted, the Applicants traverse the Examiner’s restriction requirement. Under MPEP § 803, a restriction is proper only when two things are present: (1) “[t]he inventions must be independent or distinct as claimed”; and (2) “[t]here would be a serious burden on the examiner if restriction is not required.” Among other things, the Examiner argues that because the inventions have “acquired separate status in the art as shown by their different classification,” there would be an undue search burden on the Examiner.

The Applicants respectfully state that a search and examination of Groups I, II and III would not represent an undue burden on the Examiner. In particular, in light of the election as to species discussed below, for search and examination purposes, the claims of Groups I, II and III involve the elected species. As such, the search required to examine the claims encompassed by Groups I, II and III is reduced and not undue. Therefore, restriction between Groups I, II and III is improper. The Applicants respectfully request examination of Groups I, II and III on the merits.

## **II. Election as to Species**

The Non-Final Office Action dated November 1, 2006 requests that the Applicants elect, for search purposes only, a single disclosed patentably distinct species of the following: (1) C<sub>8</sub> alkyl sulfate; (2) C<sub>8</sub> amine oxide; and (3) alkyl trimethyl ammonium chloride. In accordance with these requests, and as discussed with the Examiner during a telephonic conference, the Applicants hereby elect, with traverse, the following:

**C<sub>8</sub> alkyl sulfates** consisting of n-octyl sulfate (e.g., Polystep® B-29)

**C<sub>8</sub> amine oxides** consisting of N,N-dimethyl-n-octylamine oxide (e.g., Ammonyx® C8)

**Alkyl trimethyl ammonium chlorides** consisting of didecyl dimethyl ammonium chloride (e.g., BTC® 1010).

Support for these elections can be found in the specification. For instance, support for the election of Polystep® B-29 as a species of C<sub>8</sub> alkyl sulfates, which is a species of anionic surfactants, can be found on page 25 of the submitted application. Support for the election of Ammonyx® C8 as a species of a C<sub>8</sub> amine oxides, which is a species of a bridging surfactant, can be found on page 30 of the specification. Finally, support for the election of BTC® 1010 as a

species of alkyl trimethyl ammonium chlorides, which is a species of cationic surfactants, can be found on page 19 of the specification.

As noted by the Examiner, this election is with traverse and for search purposes only. Specifically, MPEP § 806.04(b) provides that “[w]here an application includes claims directed to different embodiments or species that could fall within the scope of a generic claim, restriction between the species may be proper if the species are independent or distinct. However, 37 C.F.R. 1.141 provides that “an allowable generic claim may link a reasonable number of species embraced thereby.” Accordingly, as the Examiner has noted, if a generic claim is found to be allowable, an election would no longer be proper.

In light of the election as to invention and species, the Applicants believe that currently pending claims 1-3, 8, 10-13, 23, 24 and 26-32 read upon the elected grouping and indicated species. Therefore, the Applicants request prosecution of those claims on the merits.

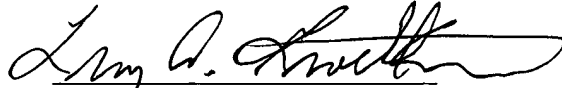
### **CONCLUSION**

Applicants hereby elect with traverse the above described invention and species for purposes of prosecution on the merits. Applicants’ election is made without prejudice to their right to file one or more divisional applications directed to any non-elected subject matter.

Applicants believe that no fee is due in conjunction with the filing of this Response to the Non-Final Office Action. The Commissioner is, however, hereby authorized to charge any fees which may be required, or credit any overpayment to Deposit Account No. 13-0017, in the name of McAndrews, Held & Malloy, Ltd.

Respectfully submitted,

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